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**IN THE  
COURT OF APPEALS OF INDIANA**

In the Matter of the Termination of the )  
Parent-Child Relationship of D'Q. S. and D'Q. S, )

DEWAYNE SIMMONS,

Appellant,

VS.

LAPORTE COUNTY DEPARTMENT  
OF CHILD SERVICES,

Appellee.

No. 46A05-0612-JV-712

APPEAL FROM THE LAPORTE CIRCUIT COURT  
The Honorable Sally A. Ankony, Magistrate  
Cause No. 46C01-0604-JT-40, -41

**June 21, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**DARDEN, Judge**

## STATEMENT OF THE CASE

Dewayne Simmons appeals the trial court's order terminating his parental relationship with his children, D'Q. S. ("Son"), and D'Q. S. ("Daughter"), (collectively, "the Children").

We affirm.

## ISSUE

Whether sufficient evidence supports the termination of Simmons' relationship with the Children.

## FACTS

Teresa Redden ("Mother") and Simmons had two children: Son, born on July 8, 1999, and Daughter, born on June 13, 2000. Beginning in 2000, Simmons was imprisoned for seventeen months. In mid-2002, Simmons was out of prison and living with Mother and the Children. On June 18, 2002, the LaPorte County Department of Child Services ("DCS") received a report of children living in an abandoned apartment at a certain address. DCS caseworker Jane Baker and police investigated.

Simmons opened the door. Inside, Baker saw that the Children were in "pretty poor condition," with Son being "especially dirty, with feces on him," and there was no clean clothing for either child. (Tr. 50, 51). The apartment was "boarded up," had "no utilities whatsoever," and there was "no food, with the exception of a jar of Kool-Aid." *Id.* Mother told Baker "they had . . . stayed there because they had no place else to go." (Tr. 53). Simmons admitted to Baker that they had no right to be in the apartment.

The Children were placed in foster care, and DCS filed a petition alleging the Children were Children in Need of Services (“CHINS”). At a fact-finding hearing on October 31, 2002, Mother and Simmons admitted the allegations of the petition: that they had been living with the Children in an abandoned, dirty and unsanitary apartment without utilities; that they had failed to provide the Children with appropriate arrangements for sleeping or clean clothing and diapers; that they had not had the necessary food for the Children; and that they had “resided in multiple dwellings since October of 2001.” (App. 14). Mother and Simmons further admitted that since June of 2002, they had been unable to provide the Children with appropriate shelter. In addition, Simmons admitted that services had been “offered to the natural parents to assist them in fulfilling their parental responsibilities with the children” but had “been rejected by the natural father.” (App. 16). Further, at the time of the hearing on October 31, 2002, Simmons was “incarcerated at the LaPorte County Jail.” *Id.*<sup>1</sup> The Children were found to be CHINS and continued in foster care.

In a dispositional order dated December 16, 2002, it was noted that Simmons had established legal paternity of the Children.<sup>2</sup> The order stated that because Simmons remained incarcerated on criminal charges filed under two separate cause numbers, “no services [were] to be offered to him.” (App. 20). DCS attempted to provide services to

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<sup>1</sup> The trial court found that Simmons has been incarcerated since October 8, 2002, and he does not challenge that finding.

<sup>2</sup> Mother and Simmons were not married, and the petition had simply named Simmons as the natural father. Subsequently, Simmons established legal paternity.

Mother. However, in April of 2005, DCS learned that Mother had been arrested; thereafter she remained incarcerated.

The Children were in foster care, and they also received regular therapy for behavioral issues. In June of 2005, they were placed in therapeutic foster care with the Smiths.

In the meantime, on April 6, 2006, DCS had filed a petition to terminate the parental relationships of Mother and Simmons. The trial court held a fact-finding hearing on July 20, 2006. Mother participated in the hearing by telephone. After the testimony of Baker about the conditions of the June 2002 removal, and of psychologists Dr. Titus Clifton and Dr. Jeffrey Samelson regarding Mother's ability to parent, Mother expressed her intention to consent to the voluntarily termination of her parental rights.<sup>3</sup> The trial court indicated that it would await receipt of her written consent, and it continued to hear evidence.

Donna Skorupsky, a clinical social worker, testified that she had been seeing the Children since September of 2005. Skorupsky testified that they evidenced Post Traumatic Stress Syndrome, which can result from "chronic neglect" in children's "early years," when the children's needs are not met at a very young age. (Tr. 67). She described each child's specific behavioral symptoms reflecting PTSD. Skorupsky testified that when she had asked the Children about Simmons, they did not respond; Skorupsky opined that they had no conscious memory of him. Skorupsky further

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<sup>3</sup> Mother indicated that unless her sentence was modified, her release date was in 2013.

testified that the Children would need ongoing, long-term therapy, and that it was “very important” for them “to have permanency as soon as possible” and to have “a stable home.” (Tr. 69). According to Skorupsky, “a disruption in their environment” of custody with the Smiths would “do[] more damage” to them and “be a setback for them.” *Id.*

Michelle Goebel, the DCS family case manager for the Children since August of 2004, testified that Simmons had never contacted her to inquire about the Children or about communicating with them. Goebel testified that since 2002, Simmons’ only attempts to communicate with the Children were when he sent Daughter a card in June of 2005 and another in June of 2006. According to Goebel, the Children were “doing very well” and “happy” with their foster parents, the Smiths; they were not exhibiting “the anxiety that they had before.” (Tr. 119). Goebel testified that if parental rights were terminated, the plan for the Children was “an adoption placement” with the Smiths. (Tr. 119).

CASA volunteer Mary Stark, a special education teacher, testified that she had been assigned to the Children and met with them weekly for more than six months and then monthly for the past year. Stark testified that she observed “typical child/parent interaction” between the Children and the Smiths. (Tr. 129). Stark opined that adoption by the Smiths would be in the Children’s best interest, and that the Children had expressed to her their desire to stay with the Smiths.

Cidrina Smith, the foster mother, testified that the Children had seldom mentioned Simmons. Smith testified that since June 17, 2005, the Children had received one piece

of correspondence from Simmons – with a card for each from him. Smith expressed her desire to adopt the Children. Anthony Smith, the foster father, testified about the improvement he had seen in the Children in the past year, that they had “come a long way” and were now “very happy,” “smiling a lot,” and had friends. (Tr. 149, 150). Smith also testified that the Children had “never mentioned” Simmons and never “asked [him] anything about” Simmons. (Tr. 150, 153). Smith testified that he was ready to commit to the Children “for a lifetime.” (Tr. 154).

Simmons testified that he had been imprisoned since October of 2002 on drug charges. Simmons described classes he had taken in prison and expressed his hope for a release the third week of September, 2006. Simmons testified that upon release, he would attempt to gain employment, to qualify for disability compensation,<sup>4</sup> and to find an apartment. Simmons acknowledged that these accomplishments would take time, but he asked for “a chance to be a father to [his] kids.” (Tr. 183). Simmons’ sister testified that Simmons now believed that it was important for him to be a good parent “because he’s faced with losing his children and he wasn’t . . . faced with that before.” (Tr. 158).

On September 28, 2006, the trial court issued its order. It found that Mother’s signed voluntary relinquishment of parental rights had been filed on September 6, 2006. It further found that DCS has established that Simmons’ parental rights should be terminated.

### DECISION

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<sup>4</sup> Simmons testified that he would be able to work part-time while receiving disability compensation benefits.

Parental rights are of a constitutional dimension, but the law provides for the termination of those rights when the parents are unable or unwilling to meet their parental responsibility. *In re R.S.*, 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), *trans. denied* (citing *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied, cert. denied*). The purpose of terminating parental rights is not to punish parents but to protect children. *Id.*

The trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *R.S.*, 774 N.E.2d at 930. Termination of the parent-child relationship is proper where the child's emotional and physical development is threatened. *Id.* Moreover, the trial court need not wait until the child is irreversibly harmed such that his physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.* The parent's habitual pattern of conduct is relevant to determine whether there is a substantial probability of future neglect or deprivation of the child. *Id.*

The appellate court will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. *Id.* at 929-30. When reviewing the sufficiency of the evidence to support the judgment of involuntary termination of the parent-child relationship, we neither reweigh the evidence nor judge the credibility of witnesses. *Id.* at 930. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. *Id.*

When a county office of family and children seeks to terminate parental rights, the office must plead and prove in relevant part that:

- (A) The child has been removed from the parent for at least six (6) months under a dispositional decree; . . .
- (B) There is a reasonable probability that:
  - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home will not be remedied; or
  - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) Termination is in the best interests of the child; and
- (D) There is a satisfactory plan for the care and treatment of the child.

Ind. Code §§ 31-35-2-4(b)(2), 31-35-2-8(a).

Simmons argues that DCS failed to prove the above statutory elements. He first notes that the testimony of Dr. Titus and Dr. Samelson concerned Mother, that neither had ever met or evaluated Simmons. Simmons then directs us to his own testimony and that of his sister – evidence suggesting his sincere intention to make the necessary efforts to gain the ability to parent the Children. We remind Simmons that when we review a trial court's determination on the termination of a parent-child relationship, we do not reweigh the evidence or judge the credibility of the witnesses. *See R.S., 774 N.E.2d at 930.*

Simmons further argues that “not one shred of evidence” showed that he “had ever harmed his children, either negligently or deliberately.” Simmons' Br. at 6. Simmons did not provide a safe place for his children to live. He did not provide them with clean clothing and diapers and a bed in which to sleep. He did not provide them with food. These facts are evidence that Simmons' parenting did threaten the Children's emotional and physical development. *R.S., 774 N.E.2d at 930.* Further, Simmons' prior and current incarceration as well as the lack of any evidence that Simmons was ever employed and providing for the support of the Children support the inference that his habitual pattern of



conduct indicates a substantial probability of future neglect. *Id.* Therefore, we conclude that the evidence supports the trial court's conclusion that the conditions that led to the Children's removal will not be remedied.

Simmons makes a general argument that because he was not provided services to enable him to parent successfully, he should now be given "the opportunity to reunite with his children." Simmons's Br. at 6. Simmons asserts that he "testified that he was willing to do whatever it took to get his kids back." *Id.* However, the portion of the Appendix to which he direct us in that regard does not support the assertion. It is undisputed that for several years, Simmons made no effort whatsoever to contact DCS concerning the Children or to communicate with the Children. Moreover, when Simmons was offered services in the summer of 2002, he rejected them. Further, after having rejected services toward reunification with the Children, Simmons then chose to commit acts that resulted in two separate criminal prosecutions, and since October of 2002, he has been incarcerated on drug charges. We have observed that "[i]ndividuals who pursue criminal activity run the risk of being denied the opportunity to develop positive and meaningful relationships with their children." *Castro v. State Office of Family and Children*, 842 N.E.2d 367, 374 (Ind. Ct. App. 2006), *trans. denied*, (quoting *Matter of A.C.B.*, 598 N.E.2d 570, 572 (Ind. Ct. App. 1992)).

Simmons is asking that he be given "another chance" to learn to be a parent for the Children. However, when considering whether termination is appropriate, the best interests of the children are paramount, and the purpose of a termination of parental rights is the protection of children. *R.S.*, 774 N.E.2d at 930. The Children have spent well over

half their lives having no contact with Simmons.<sup>5</sup> They have suffered emotional damage from the deprivation of their early years when Simmons was somewhat involved with their lives, and they will require special help for years to come. Their need for permanency, a stable home, and appropriate parenting outweighs Simmons' desire for a "another chance."

It is undisputed that the Children had been removed from Simmons for more than six months at the time of the final hearing. It also appears undisputed that there was a satisfactory plan for the care and treatment of the children – adoption. We have found that the evidence supports the trial court's conclusion that the conditions that resulted in the removal of the Children from Simmons' custody and their placement in foster care will not be remedied. Further, evidence from the case manager, the therapist, and the CASA volunteer supports the trial court's inference that termination would be in the best interest of the Children. Therefore, the trial court's conclusion that the DCS established the statutory prerequisites for terminating the parent-child relationship is not clearly erroneous. *R.S.*, 774 N.E.2d at 930.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.

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<sup>5</sup> Son was age 3 at the time of separation; Daughter was age 2. At the time of the order, Son was 7 and Daughter was 6.